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14 and ZYXEL COMMUNICATIONS A/S  
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19 UNITED STATES DISTRICT COURT  
20 FOR THE NORTHERN DISTRICT OF CALIFORNIA

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22 In re APPLICATION OF ZYXEL  
23 COMMUNICATIONS UK LIMITED and  
24 ZYXEL COMMUNICATIONS A/S FOR AN  
25 ORDER PURSUANT TO 28 U.S.C. § 1782  
26 GRANTING LEAVE TO OBTAIN  
27 DISCOVERY FROM BROADCOM INC.  
28 and BROADCOM CORP. FOR USE IN  
FOREIGN PROCEEDINGS

Civ. A. No. 19-mc-080175

SECOND DECLARATION OF MARK  
MARFÉ IN SUPPORT OF EX PARTE  
APPLICATION OF ZYXEL  
COMMUNICATIONS UK LIMITED and  
ZYXEL COMMUNICATIONS A/S

19 I, Mark Charles Marf , declare as follows:

20 1. I make this declaration in order to inform the court about a very recent  
21 development in the litigation between TQ Delta and ZyXEL that is the subject of this  
22 application.

23 2. On July 18, 2019, the Court of Appeal (Civil Division) handed down a judgment  
24 that held that the RAND declarations that the claimant, TQ Delta LLC, was seeking had no  
25 real prospect of success. A true copy of the judgment is attached to this declaration as Exhibit  
26 1.

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28 DECLARATION OF MARK CHARLES MARF 

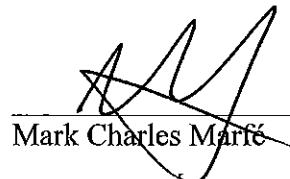
1           3. As a result of this new judgment, the September 2019 RAND trial referenced in  
2 Paragraph 8 of my prior declaration, dated July 3, 2019, will not go forward on that date. A  
3 true copy of the sealed order of the Court of Appeal is attached to this declaration as Exhibit  
4 2. Pursuant to the order, the RAND trial listed to take place in September 2019 will be  
5 vacated. Moreover, TQ Delta is refused permission to appeal to the Supreme Court by the  
6 Court of Appeal. However, I believe that TQ Delta may now seek leave from the Supreme  
7 Court, to take an appeal to the Supreme Court.

8           4. Because of the possibility of an appeal it is now uncertain whether a RAND trial  
9 will take place in England. However, if TQ Delta obtains that permission and if its appeal  
10 succeeds, then the RAND trial may be listed again and preparations for the RAND trial will  
11 recommence. In light of the likelihood of an appeal, however, ZyXEL continues to believe  
12 that the discovery it seeks in this proceeding for use in the English proceeding is of high  
13 importance. It is currently not known when TQ Delta will be informed by the UK Supreme  
14 Court whether it has obtained permission to appeal.

15           5. Moreover, the second action TQ Delta commenced against ZyXEL in March  
16 2019, referenced in Paragraph 9 of my prior declaration, remains pending. The evidence  
17 ZyXEL plans to obtain in this discovery proceeding will be relevant to the March 2019 action  
18 as well if permission to appeal is obtained by TQ Delta and the subsequent appeal succeeds.

19           I declare under penalty of perjury under the laws of the United States that the foregoing is  
20 true and correct.

21           Executed on July 23, 2019 in London, England.



Mark Charles Marfé

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28           DECLARATION OF MARK CHARLES MARFÉ